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Chair

Mr. David Chatters

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•(1905)

[English]

The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good evening, ladies and gentlemen. I'll call the meeting to order.

This is the Standing Committee on Access to Information, Privacy, and Ethics. Pursuant to Standing Order 108(3)(h), our the order of the day is the possible merger of the offices of the information and privacy commissioners.

We have a guest here this evening, who is the Honourable Gérard La Forest. He has someone with him, whom I assume he will introduce at the appropriate time.

The Hon. Gérard La Forest (Special Advisor to the Minister of Justice, As an Individual): Steven Penney.

The Acting Chair (Mr. David Tilson): Steven Penney.

The Hon. Gérard La Forest: He is a professor at the University of New Brunswick.

The Acting Chair (Mr. David Tilson): It's a good university. It's my alma mater.

I welcome you, sir.

Mr. La Forest, you can make a few introductory comments, then members of the committee may have some questions for you.

Thank you for coming this evening.

The Hon. Gérard La Forest: Thank you.

[Translation]

Thank you for inviting me to discuss this subject with you this evening.

[English]

Let me say, first of all, I appreciate your invitation to speak to your committee. The invitation flows, of course, from the fact that I've been commissioned by the Prime Minister to prepare a report for the consideration of the Minister of Justice assessing the challenges facing the existing models for promoting and protecting two interrelated rights of major importance to our polity: the right of the public to access information in the control of government and the right to privacy, particularly as it relates to personal information contained in government records.

The first of these rights, as you know, is primarily intended to promote transparency in government operations to ensure the proper functioning of our democratic form of government. The second is

necessary to protect the autonomy of the individual in an information-driven age.

The first paragraph of the terms of reference asks me to make an assessment of the challenges to the offices of the two commissioners and to provide options for the government. You will appreciate that if this part of the mandate were interpreted broadly, it could be busy indeed for an extended period of time. Fortunately, the second and third paragraphs of the terms of reference have reined in the possibility of such an ambitious interpretation by particularizing the true nature of the enterprise, that is, an assessment of the merits and the impact of merging the offices of the Information Commissioner and the Privacy Commissioner, as has been done in the provinces, as well as an assessment of the merits of appointing one person as commissioner for both offices. That this was what was in mind is clear from the contemporary remarks of the Prime Minister.

It is also evident that this was the specific intention envisaged when one observes that the time limit for the study is November 15, one that I'm determined to do my all to meet. That timeline was the reason for my hesitation to accept your invitation. I was concerned with what I could usefully say to you, since I am inhibited in what I can say until I've submitted my report to the minister. At the same time, it may be that you have something to say that would be useful to me.

I can, however, tell you how it seems to me to fit in with the ongoing studies that are taking place in relation to the offices in question. Many useful steps have, over the years, been taken at the federal level to secure the right of access to government information and to protect the right of individual privacy in relation to personal information contained in government records. Nonetheless, in my view, considerable improvements remain to be made to both the Access to Information Act and the Privacy Act. I therefore welcome your committee's initiative in undertaking a thorough review of the former act, as well as the work done by the Delagrave task force and by the Information Commissioner on that matter. I also welcome the recent call by the Privacy Commissioner for a complete overhaul of the Privacy Act.

In approaching the reform of these acts, merger of the two offices is certainly not the most important issue, but it is part of the puzzle and merits careful examination. The issue was raised for the first time from the time of the enactment of the two statutes, and it continues to come up on a regular basis like some hardy perennial. Despite this, so far as I am aware, the pros and cons of the matter had never been considered in any depth in any public document at the time of my appointment, though there's no lack of knee-jerk reactions on both sides of the issue.

In my examination of the subject, I've looked closely at the relevant legislation and its history, both at the federal and provincial levels, and I have also acquired some familiarity with that of other countries. As well, I followed this up with discussions with the two federal commissioners and some of their predecessors, as well as members of the four largest provincial commissions. The commissioners at both levels have been very cooperative, and I would like to publicly thank them for their assistance.

I've also had the advantage of perusing the summaries of discussions with other commissioners compiled by the Delagrave commission. This information was supplemented by contacts and meetings with as many academics, users of the system, and other interested persons as the time allotted to me permitted. I also received a number of helpful written submissions. Despite the limited time at my disposal, I am satisfied that I have been able to get a good cross-section of the views of the interested parties.

● (1910)

One point that had become clear to me from this exercise is that in Canada we have the good fortune of having at least two quite viable models of institutions for the protection of the important rights of freedom of information and the protection of privacy, each of which has its advantages and disadvantages. I therefore now have a better understanding of why a number of federal commissioners have vacillated on the issue of whether the two federal offices should be merged. At all events, I found my discussions and studies of the provincial commissions very useful in framing options for consideration as required by the terms of reference. As also required, I shall look at the possible impact if it was decided to merge the present offices, as well as the issue of cross appointments.

I shall, of course, soon be advising the minister of what appears to me to be the better course to follow. But whatever course I may suggest, I do not have the effrontery to think it will necessarily commend itself either to the government or Parliament. My hope is that the report will have the merit of more clearly identifying and clarifying the questions that must be weighed in making a decision on merger and the related issues.

Thank you very much.

The Acting Chair (Mr. David Tilson): Thank you, Mr. La Forest. You've helped us understand the process a little better.

I think members of the committee now have questions for you.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Mr. Chair.

Thank you, Mr. La Forest and Mr. Penney, for appearing before us.

Before I get into some specific questions on a range of issues, I'd like to go over something that I'm a little confused about and would like to get your opinion on.

In 2002, it is my understanding you provided one, two, or perhaps more legal opinions to the Office of the Privacy Commissioner. Is that true?

The Hon. Gérard La Forest: That is correct.

Mr. Tom Lukiwski: It's my understanding that now you have been retained by the Minister of Justice to provide an opinion on whether or not the offices of the Privacy Commissioner and the Information Commissioner should basically be folded into one. You also, I believe, have had conversations with both the Privacy Commissioner and the Information Commissioner in your consultations and you recognized that the Privacy Commissioner has expressed an opinion that she does not believe the unification of these two departments should take place.

I'm wondering, sir, because of the work you've done prior with the Privacy Commissioner, at least the Office of the Privacy Commissioner—I understand it was Mr. Radwanski, and so it wasn't the current Privacy Commissioner—if you see that there's any potential conflict whatsoever. And frankly, had you ever considered recusal?

● (1915)

The Hon. Gérard La Forest: I don't see any conflict. The answers I had prepared for Mr. Radwanski were questions of a specific nature—specific in the sense of cameras, for example, whether this could invade privacy. There was one also about the exchange of files among departments for purposes other.... I don't see what that has to do with this question, which is a structural one. You know, you can be a great privacy person, you can be a great access person, but the structures of both have to be adequate. I think one has to be careful that, whatever decision is made, it is the best for both.

If I may say so, my interest in both has been long-standing. I was the public servant who made the first study of both the notion of access, way back in 1970, as well as the privacy and the human rights, so the whole area is of interest to me. I know some parts of one better than others, and I think it is probably useful for you to know this background.

Mr. Tom Lukiwski: I appreciate that. I did not know that, so thank you for the information.

I know it's a bit of a stretch. I want to assure you that the only reason I was pursuing this originally is that I know, as you do, that the conflict of interest guidelines for lawyers these days are getting extremely strict and tightened up far more than they were a few years ago—according to the old adage that justice must be done and perceived to be done.

My final question along this line is, don't you see a problem with someone who has worked with the government before being retained to offer this opinion? Or do you think it would be better served for the government to have someone with no association?

The Hon. Gérard La Forest: Well, if they had no association, I can assure you they'd never be able to finish this job in the length of time I'm given.

Mr. Tom Lukiwski: Thank you for that, sir.

Let me ask you this. Again, it's my understanding—and please correct me if I'm wrong—that when you were initially appointed, you did not have any written mandate. So had you been contracted, but not received any terms of reference or a mandate?

The Hon. Gérard La Forest: Yes, I think I sent the committee the terms of reference. I had not seen them when they were given to me. It had been mentioned I should look at the question of merger. Then the mandate has what I call peripheral questions against them. In fact, one would have to study to put the question in context, too. You have to know a little more about the organization of both these offices before you can say they should be merged.

Mr. Tom Lukiwski: So you had no written notification of your appointment, but you obviously got some verbal confirmation, or you had a discussion. Was that with the Prime Minister or the justice minister?

The Hon. Gérard La Forest: Well, when I spoke to the justice minister, I only spoke to the justice minister. He talked to me about the merger. When I got the mandate, it is as you read it. As I say, I looked at the others as peripheral and, in the end, necessary questions to doing a decent job on the basic issue of merger.

Mr. Tom Lukiwski: Since there was no written notification at that time when you spoke with the justice minister, did he give you any indication, verbal or otherwise, of his preference, what he would like to see in terms of the unification of these two departments, or not?

The Hon. Gérard La Forest: No.

• (1920)

Mr. Tom Lukiwski: Okay.

How much time do I have, Mr. Chair?

The Acting Chair (Mr. David Tilson): You have a minute.

Mr. Tom Lukiwski: Thank you.

I'd like to go on to a couple of other things, and I'll have some later in the evening. On the budget, we've been led to understand what your per diem is—in a range between \$440 and \$520 a day—but we don't have a sense of what the overall budget will be for this exercise. Could you give us any kind of estimate of what the budget may be for this?

The Hon. Gérard La Forest: I don't have it before me. I regret I did not look at that before I came.

Let me tell you what there is. Of course there's the per diem I'm getting, of which you're informed. I felt I needed somebody for that length of time to help me. I have Mr. Penney and my legal assistant I used to have at the office. These are the only people involved. I don't anticipate the size of the budget should be too....

Essentially, it will be largely the trips I've had to take back and forth to Ottawa, and with Mr. Penney, and vice versa. I think there were two witnesses we had to go to, at not long distances. In other words, we're not talking big money in the end. I think the budget itself may look larger than will actually be expended.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Lukiwski.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you very much, Mr. Chairman.

Thank you, Mr. La Forest, for taking part in this committee meeting.

The Hon. Gérard La Forest: When you get old...

Mr. Mario Laframboise: I'd like us to address the budget question again. We asked the representatives of the departments concerned how big that budget was, and they told us they didn't know. You yourself don't know what amount has been allocated to you.

Can you undertake to submit the budget to the committee?

The Hon. Gérard La Forest: Yes, I can definitely get it. As I was telling you, first you draft a budget for a certain amount because you never know what's going to happen. However, I told you about the kind of expenses we would have.

[*English*]

The Acting Chair (Mr. David Tilson): Excuse me. Mr. La Forest, you'll see some of us wearing earpieces. It doesn't matter which language it's in. If you're having trouble hearing some of us, you can use the earpiece.

The Hon. Gérard La Forest: You're having trouble with hearing what—

The Acting Chair (Mr. David Tilson): No, I hear every word you say, sir, but I thought you had mentioned that you were having trouble hearing Mr. Laframboise.

The Hon. Gérard La Forest: Oh, no. I don't need anything else, but I think momentarily—

The Acting Chair (Mr. David Tilson): Okay.

The Hon. Gérard La Forest: The honourable member had his head down—

The Acting Chair (Mr. David Tilson): Okay.

The Hon. Gérard La Forest: —and I wasn't hearing him.

[*Translation*]

Mr. Mario Laframboise: So if we asked you to submit it, that wouldn't bother you?

The Hon. Gérard La Forest: I don't even know if I have it at hand. I left it at the Department of Justice. I don't know...

Mr. Mario Laframboise: You could submit it to the clerk at another time.

The Hon. Gérard La Forest: If the department has no objection on the matter, I don't either.

Mr. Mario Laframboise: Very well. For our part, we have questions. The testimony of the Information Commissioner and that of the Privacy Commissioner lead us to believe that no one has requested a study on the merger of the two offices. I can read you the comments of both commissioners, who recently appeared. Perhaps you've had a chance to read them already. Ms. Stoddart said the following:

In a nutshell, however, I think more important matters relate to the legislation and resources available to the offices...

In speaking about your work, she said:

They [observations] will also be made public — and I would be pleased to send you a copy, Mr. Chairman for the purposes of this committee's study. In a nutshell, however, I think more important matters relate to the legislation and resources available to the offices to achieve their mandates.

So she feels that resources are more important than the merger. You mentioned earlier that you were examining those resources. Are you also analyzing available resources and the surplus work each of the offices is facing? Are you going to include that in your report?

The Hon. Gérard La Forest: As I said at the start of the meeting, every time there's a new commissioner, we wonder whether the two offices should be merged. That keeps coming up again. I don't know what led the government to assign me this file, but I know that the debate has been going on for a number of years now.

Perhaps it's due to the fact that, in the provinces, only one commissioner is responsible for both areas. Perhaps, and I mean perhaps, in the two offices, people responsible for the organization feel the two agencies have many things in common and they wonder if it would not be better to combine them for financial reasons. It's possible people were led to address this question for this kind of reason. However, I really don't know.

• (1925)

Mr. Mario Laframboise: We don't either, and that's why we've asked you to appear, Mr. La Forest. We're looking for an answer as well. Ultimately, what the two commissioners told us...

The Hon. Gérard La Forest: I can tell you that, in documents I've previously consulted, this question always came up. I can tell you that. It seems that, at the very outset, no one was in a position to decide. The minister responsible for access to information was then allowed to be in charge of privacy as well. This concern has been around for a long time. It's clear, however, that the provinces operate very well in this area. So it's possible government expenditures and organization were considered, but I can't tell you any more because I don't know any more.

Mr. Mario Laframboise: I thought we had gone beyond that. As regards access to information, one need only think of the sponsorship scandal. Currently, a large number of requests aren't being processed; staff is lacking. As for privacy, we see that laws have been restricting citizens' freedoms since September 11, 2001. There's an excess number of requests. So I've gotten to the point where I feel the government should have conducted a needs analysis rather than go back to its old pet project, the merger of these two agencies.

You'll probably come to that conclusion in your report. However, with regard to the two offices, I believe the provinces are not under the same pressure as the federal government. That's in a way what we were saying. But suddenly you enter the picture; you have a budget and a mandate to make recommendations. I want to tell you that we had long forgotten this possibility. I believe we have to manage to put an end to this eternal debate. That will probably be the case.

The Hon. Gérard La Forest: It's quite possible, but I don't know. The Prime Minister is waiting for that opportunity, and we should resolve the matter.

Mr. Mario Laframboise: For that reason, my first question...

[English]

The Acting Chair (Mr. David Tilson): We're pretty well finished.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you, Mr. La Forest. I really appreciate the economy of language and the persistence of language that you bring to the committee. Your past experience is evident.

I was going to get back to the motivation for your study. As a legislator, from my perspective, I would have seen the reason for the initiative residing almost totally in a desire to bring some economy to the administrative functions. I can only assume that you have recognized that and that you would bring that focus to bear in your study. In doing that, can you indicate to us how you're going to do the financial administrative analysis of this? Would you have a government department or government departments do a work-up on something, or would you yourself try to put something together?

The Hon. Gérard La Forest: I think that the economic side is extremely difficult to work out, certainly within this length of time. It would require my examination of people in government, which I have studiously avoided. I've stayed away from asking questions to the government, which in a way has inhibited to a degree the....

It is efficiency, I think, or can be seen as that if you look at a system operating, an information system, and you hear people saying that privacy and access to information are different sides of a coin. In other words, there is a line of reasoning that could stretch within the government. How do you organize information when you have two different commissioners coming at you with different advice and different matters?

In the provinces, as I say, they have combined them, and they have that kind of advantage. I think that needs to be looked at. In the end, to balance—and I will try to identify that sort of thing—on the financial side, I think that unless you were a finance person, you probably could not come up.... I'll tell you this: I'm convinced there is an awful lot of guesswork on whether you'd make money or lose money on it, at least from my perspective. So I don't intend to go into any great depth on that aspect of the matter.

• (1930)

Mr. Derek Lee: Yes, some of our earlier evidence had pointed out to us that sometimes when you try to do a merger in business or government, it ends up costing you more money than you had planned—way more.

The Hon. Gérard La Forest: Yes.

Mr. Derek Lee: I have to change my way of thinking, then, if I'm going to receive your report in a useful way, because I had been looking at the costs, whereas you believe that what you'll be looking at more are the core elements of the functions of the Privacy Commissioner and the Information Commissioner.

The Hon. Gérard La Forest: What's the best way to function?

Mr. Derek Lee: Yes.

The Hon. Gérard La Forest: Of course, money plays a part, but I think that may be *de minimis* in fact. At least, there would have to be an awful lot of guesswork as to how you would organize it.

Mr. Derek Lee: Have you had an opportunity to see the playing out of the obvious tension sometimes between privacy and access? I'll just throw out a hypothetical situation. An issue comes up, and it gets litigious, and then you have in the same courtroom the Privacy Commissioner advocating a certain way and the Information Commissioner advocating another way. You have six lawyers over here, you have five lawyers here, and this wing of government is fighting itself. Have you seen that perspective? Have you thought about that?

The Hon. Gérard La Forest: That can again be looked at in two ways. It can be looked at as a disadvantage in the sense that the government is getting conflicting advice. It can be looked at as an advantage because, in a single commission, you would obviously have one single adviser who would have balanced it originally.

In our case, there is the fact that this debate takes place in public. I don't know how big an advantage it is, how much it matters in practice, because there are not very many cases, in fact, where there is that kind of tension. That's one of the things I'll be discussing in the report.

Mr. Derek Lee: Okay, thank you. My time has probably expired.

The Acting Chair (Mr. David Tilson): You have a minute, or if someone else wants to—

Mr. Derek Lee: Yes, Ms. Jennings has a question.

The Acting Chair (Mr. David Tilson): I said a minute, now, Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you for coming before us.

You mentioned that the provinces combined the two functions into one organization. My understanding is that there are also jurisdictions outside of Canada that have done so.

With your experience and knowledge of these two areas, are you aware of any grassroots movement in opposition to the fact that the two functions exist already under one roof in certain jurisdictions?

The Hon. Gérard La Forest: Do you mean among the public?

Hon. Marlene Jennings: Yes.

The Hon. Gérard La Forest: I wouldn't say there's a grassroots movement. I think there are people on either side of the question. Not surprisingly, people who are interested in the provincial commission will favour one model; those who deal with the federal one prefer the other model.

As I've told you, we have two viable ones. They have advantages and disadvantages. Ultimately, the question is whether we should not, given the success of the provinces, have a hard look and see whether that is the better model and whether they should be merged.

• (1935)

Hon. Marlene Jennings: Thank you.

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair.

Good evening, Mr. La Forest.

I'm new to this committee and I wasn't part of the committee when they chose to invite you here today, but I will confess that I'm a little confused as to why we have you here. I have a copy here of the terms of reference and your mandate. It says—

Mr. Paul Zed (Saint John, Lib.): On a point of order, Mr. Chair, I am in the same boat as Mr. Martin. Perhaps the chair could explain to committee members how Justice La Forest was invited here tonight.

The Acting Chair (Mr. David Tilson): It doesn't really matter. He's here. If you want to waste time proceeding.... The majority of committee did decide that it would be appropriate that he come. There was an issue as to whether or not this was supportable. If you recall, questions have been asked of the Information Commissioner and questions have been asked of the Privacy Commissioner. In both those cases, they said that they didn't think it was appropriate.

On September 29—

Mr. Paul Zed: Mr. Chair, I don't want to—

The Acting Chair (Mr. David Tilson): You asked me a question, and I'd like to finish.

On September 29 the committee made a decision with respect to the schedule of business, and it was decided that on October 26 from 7 p.m. to 9 p.m. the Honourable Gérard La Forest would appear regarding the possible merger of the offices of the information and privacy commissioners. It is in the minutes from one of our former meetings.

Mr. Paul Zed: Mr. Chair, I agree. I don't want to belabour the point, but several of us on this side of the table—

The Acting Chair (Mr. David Tilson): Well—

Mr. Paul Zed: If I may finish, sir, I just wanted to echo Mr. Martin. We were equally surprised with the decision. I think it's important to be transparent and collegial in committees. Particularly in the committee that I chair, we try to operate like that. I think it would be helpful in the future—for this point of order I want to make to you, sir—that there be some established liaison committee that works with all members of all parties, a steering committee, so we avoid this in the future.

Thank you, Mr. Chair.

The Acting Chair (Mr. David Tilson): I'm not going to get into a debate with you. It's not a point of order. It was decided by members of this committee. You don't attend all these meetings, so I don't know whether you were present for this meeting or not. But it was decided at a meeting—

Mr. Paul Zed: On a point of privilege, Mr. Chair, I really wish you wouldn't.... As you know, many of us are busy with several other committees, and whether I attend a committee or not or whether you attend a committee or not is not really.... It's a point of privilege. I don't think it's appropriate for the chair to be commenting on it.

I've made my point. I'm prepared to acknowledge the chair and go back to Mr. Martin.

Thank you.

The Acting Chair (Mr. David Tilson): I didn't make that suggestion. I said that you may or may not have been present when this decision was made.

Mr. Paul Zed: That isn't what you said.

The Acting Chair (Mr. David Tilson): I'm just saying this committee made that decision, and that's it.

Mr. Paul Zed: That isn't what you said, Mr. Chair, but I'm not going to argue with you any further tonight.

The Acting Chair (Mr. David Tilson): Fine, thank you.

Mr. Martin.

[Translation]

Mr. Mario Laframboise: I have a point of order, Mr. Chairman.

Perhaps it was inappropriate to say whether the committee member was present or not, but it was just as inappropriate to ask and say why the committee had invited the witness to appear. The committee members who were present made that decision. Those who were not there missed something; that's all.

[English]

The Acting Chair (Mr. David Tilson): Okay, do we have this out of our systems?

Mr. Martin.

Mr. Pat Martin: Yes, I didn't mean to start a whole debate. I simply wanted to preface my remarks, since I don't have a—

The Hon. Gérard La Forest: It takes the pressure off me.

Mr. Pat Martin: That's right. It winds down the clock a little, as we do in Parliament sometimes.

I understand the terms of reference and your mandate, and I look forward to the information that you'll be able to share with us on November 15. From your opening remarks, I understand that you're unable to really share that with us at this stage. That was all I was getting at.

I will share with you, though, Mr. La Forest, that I'm somewhat bitter at the fact that we're dealing with this issue at all right now, because I view it as a diversionary tactic, if you will, on the part of the government, so that it can avoid what I believe is the real necessary work that needs to be done, and that's the reform of the Access to Information Act. It has been a frustration of many committee members, in that we hoped to be well along the way to a brand new Access to Information Act by now, but a number of missteps and diversions took place.

I'm just reading a speech here from the Information Commissioner, Mr. Reid, in which he says:

I have respect for, and confidence in, Dr. Gérard La Forest, but it seems to me an odd time to be taking the focus away from the reform of the Act. It might cause a cynical person to believe that the government has thrown the "merger" idea on the table now, merely to justify stalling the reform process until after the next election.

Has that occurred to you, or do you understand where we're coming from with that point of view?

● (1940)

The Hon. Gérard La Forest: As I say, I really can't answer that question at all, because I have no knowledge of that sort of thing. I have indicated to you reasons why the government might have taken the view that it's worth examining. It has been brought up to us every time. It may be that it's brought up by the public service, for

example, in order to save money for that sort of thing. But at the end of the day, I know nothing that I can add.

Mr. Pat Martin: I do see, sir, that your terms of reference don't mention the financial efficiencies at all. You're not asked to comment on any money saved.

The Hon. Gérard La Forest: I suppose I could interpret it to look into it, but I have not been asked specifically to do that. I'd think that within the length of time, it would be a different kind of inquiry. You can't do everything in the world in that length of time.

Mr. Pat Martin: No, I understand.

The Hon. Gérard La Forest: I think the substance is what's most at stake.

Mr. Pat Martin: I see, Mr. La Forest, that there is a provision under section 55 of the Privacy Act that allows the two offices to be merged without any involvement of our committee or any legislative authority. They already have the authority to merge those two offices, is that correct?

The Hon. Gérard La Forest: That's correct, yes, and this raises the question of what kind of merger you do have. There are many ways you can merge them. At the moment, you could merge them in that way, but if you did so you would find that they're very different powers at times—not contradictory, but it still doesn't quite fit as well as it did originally, I think.

Mr. Pat Martin: I notice this interesting observation as well in this speech. Actually, I'm quite enjoying Mr. Reid's speech here. He also points out that he thinks we have a healthier balance between what some say are these two competing rights—the right to access and the right to privacy—than in other countries. Would you agree that freedom of information might have primacy in the United States, whereas in Great Britain the right to privacy might have full sway? Would that be your take on those jurisdictions?

The Hon. Gérard La Forest: I think the information in the United States is clearly the one to look at. When you ask the question, I'm reminded that it's right to say, too, that the speech you quote from was a change of mind by Mr. Reid, who had presented the other opinion. That was what the government was faced with at the time, and that may have been the reason. If you get a man at the level of the access commissioner saying they should be brought together, and if it has been brought up every other year, then it seems quite legitimate to me that one would ask the question why we wouldn't look at this.

Mr. Pat Martin: Fair enough. Thank you.

The Acting Chair (Mr. David Tilson): Mr. Zed.

Mr. Paul Zed: Thank you. Mr. Chairman.

For the record, Mr. Justice La Forest, I just want to say first of all that I have been a big fan of yours over the years as a student of the law, and many of us are very grateful that you would continue to provide such good public service by agreeing to look at this difficult issue.

I think we would acknowledge that it is a short timeframe that you have been given, and certainly there is some confusion in my office about what you've been asked to do. Like Mr. Lee, I was thinking that there were some economies that could be achieved, and when I hear you today specifically telling us that you won't be looking at budgets, then I think that reframes for the committee the work we can expect to receive from you.

In terms of the provincial jurisdictions that you're going to be looking at, would you envision including some sort of chart in your report, one that would talk about the pros and cons? Is that how you would see yourself moving forward on this, sir?

● (1945)

The Hon. Gérard La Forest: I don't think I would have a chart. What I would anticipate is to give you the advantages and disadvantages that I have found. One, I knew very little about the provincial commissions before, and what you find is that you have a very good working system. Anyone who did know about it might question why we don't do that. But you do have a very good working system, at least. Potentially there are times when it may need reform—all statutes do—but you do have them. But I intend to say there is this and there is that and then come to a conclusion, somewhat in the way I proceeded in my judgments, because I've come to that literary style. The difference here is that I may propose, but someone else disposes.

Mr. Paul Zed: Thank you, Judge.

I just want to say for the record that I look forward to reading your report when it comes out. It no doubt will read as well as a lot of your judgments did.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Zed.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you very much, Mr. Chair.

I always want to make sure I'm addressing you in a proper manner and respectfully, sir. I'm not sure, so maybe you can clarify if it should be Dr. La Forest or Justice La Forest.

The Hon. Gérard La Forest: I think it's Mr. La Forest now.

Mr. Tom Lukiwski: Just Mr. La Forest? Okay, I wanted to make sure I was on the right page.

The question I had for you is on something about which many have expressed an opinion. It's on whether or not appointing a position to look at the possible merger of these two departments was the best way to do it, or whether or not, for example, this committee should have been the ones to examine this very question. I'd like to get your opinion on this. Do you think the method the government has obviously chosen is the correct one, or should it have been handled at the committee level? The officers of Parliament, as you well know, report to Parliament.

The Hon. Gérard La Forest: As I view it, either could have done it legitimately. It seems to me the government has a real interest in this sort of thing. There is, for example, the organization of privacy and access throughout the government; that's one particular way. For all I know, there may be forces within the government—I don't mean political forces, but people who are organizing people—saying this would be a better way to do it.

I don't know, but it's been arising every couple of years. At the time, as I say, there are implications for how government functions in all this. One of the observations I'd like to make is that the privacy and access commissioners should not be and are not the only people looking at the issue of privacy within government. There is room within government structures themselves to do it.

I have no concerns about this. It seems to me that the government, as the government, is interested in the functioning of government organizations. At the end of the day, I think this is an area where of course—this is a parliamentary officer—you people could have done it, but it was a matter that I gather did not concern you but did concern the Prime Minister.

● (1950)

The Acting Chair (Mr. David Tilson): Thank you.

Ms. Jennings.

Hon. Marlene Jennings: I've asked my question, thank you.

The Acting Chair (Mr. David Tilson): Monsieur Desrochers.

[Translation]

Mr. Odina Desrochers (Lotbinière—Chutes-de-la-Chaudière, BQ): Thank you, Mr. Chairman.

Mr. La Forest, the Minister of Justice has given you a special mandate. As part of that mandate, did he ask you to justify a potential merger or to study both options, that is to say the status quo and the merger?

The Hon. Gérard La Forest: If he had asked me to study both options, I would have told him not to do it.

Mr. Odina Desrochers: At the outset, did the minister ask you to conduct a serious study of the possibility of a merger, or to examine the two agencies to determine whether a merger was possible?

The Hon. Gérard La Forest: No, he didn't ask me whether it was possible. That would be another question. However, he clearly asked me whether or not a merger should be proceeded with.

Mr. Odina Desrochers: The two commissioners told us they didn't want the merger. Most of the committee members don't want it either.

[English]

The Acting Chair (Mr. David Tilson): We have to have one at a time.

The Hon. Gérard La Forest: Oh, I'm sorry.

The Acting Chair (Mr. David Tilson): I don't know whose turn it is.

The Hon. Gérard La Forest: I'll answer the question.

[Translation]

At the time, the Information Commissioner's position was in favour of the merger. That was when we addressed the question. Later on, after I was appointed, on my first visit, he told me he had changed his mind and informed me that he would be expressing his new position a few days later.

Mr. Odina Desrochers: When he appeared in committee, Mr. Reid said he had never spoken to the Minister of Justice. So it wasn't he who told the minister to take steps to determine whether it was possible to merge the two agencies. Your mandate is political; it wasn't Mr. Reid who assigned it to you.

The Hon. Gérard La Forest: No. I'm going to put it in context for you. When the minister asked me to conduct this study, Mr. Reid was in favour of a merger. The idea was to determine whether the merger should take place. The Information Commissioner addressed the question with us. Mr. Reid's speech came later. I had already been appointed at that time. He informed me then that he had changed his mind on the subject.

Mr. Odina Desrochers: That's all? Thank you.

[English]

The Acting Chair (Mr. David Tilson): We're now into the third round.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you very much.

Mr. La Forest, you mentioned a few moments ago, in answer to a question by one of the other committee members, that the single model, if we want to call it that, of information and privacy commissioners is working well in some provincial jurisdictions. My home province is Saskatchewan. I know you received a letter from the Information and Privacy Commissioner, Mr. Dickson, who was quite frankly recommending that the federal government should not combine these two offices.

I should also say for the record—I'm not sure my colleagues on the committee know this—that Mr. Dickson also shares a view I have, that executive government should not have been the one to initiate this exercise; it should have come from Parliament.

However, that being what it is, I'd like to ask you simply, sir, if Saskatchewan does not agree with the unification of these two departments—you mentioned it seems to be working well in other provincial jurisdictions—could you share with us in which provincial jurisdictions it is working well, and perhaps where the provincial jurisdictions are that think the federal government should combine?

The Hon. Gérard La Forest: I'd like to make one thing straight. I did write Mr. Dickson. I had not, as of today—or at least when I left yesterday—received his reply. So you're a little ahead of me. I had asked him because.... I had thought originally of asking only the four larger commissioners. One of the commissioners suggested I might ask Mr. Dickson about it, so I wrote him. So at the moment I have only talked to the four.

I'm sorry, what was the rest of your question?

• (1955)

Mr. Tom Lukiwski: I'm just wondering, since Mr. Dickson, representing the information and privacy office in Saskatchewan, is recommending that the federal government not merge the two, what other provincial jurisdictions, to your knowledge, hold the same view.

The Hon. Gérard La Forest: The larger provincial jurisdictions are Ontario, Quebec, Alberta, and British Columbia. Those are the ones we spoke to, because they seem to have an arrangement.

I've read Mr. Dickson's report recently, and I made the.... It's a question of time, of course; I looked at those that would be most useful. I know that in Saskatchewan he was complaining about the little bit of effort that was being made—as he saw it, anyway—on the privacy side.

In my own province, I haven't spoken yet to the ombudsman; I just would really have to walk down the street. I had decided I was just going to talk to the big ones, because they're more representative. In a smaller province—since I live in a smaller province—what's said in cabinet is known in Saint John the next day. It poses a very different situation from going to a large province like Ontario. Then again—this is another part—the federal government's much larger than any province that has to be weighed.

[Translation]

Mr. Mario Laframboise: I'd like to continue in the same vein as at the outset.

Since the sponsorship scandal, that is to say for the past two years now, there's been a lot of pressure on access to information. There have been a lot of requests. In addition, since September 11, 2001, there's been a lot of pressure with regard to privacy.

I'm all in favour of us trying to compare our situation with those of other countries, but we are nevertheless the closest country to the United States that experienced September 11, 2001. We have to deal with that state of affairs, and that entails additional pressure in the area of privacy. As a result, governments are passing laws like the one on transport security. That's all normal, but citizens are still concerned. The polls show that.

This won't be the first time the federal government has bucked the trend. In fact, I believe it's now doing that completely. The idea was probably a good one four years ago, when Mr. Reid said he was in favour of a merger. But he's changed his mind, and I understand him. That's why I'd like your study to focus as well on the excess work caused by federal legislation. Here I'm not talking about the provinces or other countries. I'm talking about legislation passed by the Government of Canada, as the neighbour of the United States, and about the excess pressure caused by that legislation. As you said, you won't be conducting an economic analysis. In any case you wouldn't have the time to do that. Instead you're going to focus on function.

It seems to me that, if the offices had previously been merged, the legitimate reaction would be to propose that there be two of them. Since the sponsorship scandal isn't over yet, there will be a lot of pressure for access to information. We're still dealing with security issues. The Americans want to step up security; once again, that means more pressure, but, in this case, it concerns personal information. Canadian citizens will still fear that their rights and freedoms will be flouted.

So I don't see how you're going to achieve your objective. From the outset, I thought this was a waste of money. I'll tell you that quite honestly. That's why I asked you earlier how big the budget was. I think it would have been preferable to invest that money in the offices in order to respond to requests.

The Hon. Gérard La Forest: That's a question you should put to the government instead of me.

Mr. Mario Laframboise: Privy Council representatives told us they had asked you to conduct a study. We asked them how much it costs. They told us they didn't know and suggested that we have you appear for that purpose.

The Hon. Gérard La Forest: They might have known, but it's the Department of Justice that has the budget.

Mr. Mario Laframboise: So that's the situation.

Thank you very much, Mr. La Forest.

[*English*]

The Acting Chair (Mr. David Tilson): Before we proceed to the fourth round, I have a question, sir. Could you inform us on what you observed?

You indicated that you have studied some of the provincial jurisdictions. Some people have said to me that the federal jurisdictions of information and privacy are substantially different to the provincial jurisdictions. It has been suggested that there are more issues in the federal jurisdiction on both areas. We have security, which is a major issue. The provinces may have some, but not as many. We also have PIPEDA.

My question is this. Should that have an effect on any decision, one way or the other, as to whether it's a completely different environment and perhaps comparisons shouldn't be made to the provincial jurisdictions?

• (2000)

The Hon. Gérard La Forest: It is obviously one of the factors that one must keep in mind. The magnitude of the federal government is one factor, as well as the kinds of problems that the federal government has. It is one of the considerations that I would have in mind.

The Acting Chair (Mr. David Tilson): Thank you, sir.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

I thank the chair for kind of pursuing the same question I was going to ask.

I don't see the comparison between the federal government, in these two offices, and the provincial governments as being an apples-to-apples type of comparison. I think that the federal government has some unique challenges, of course, beyond being part of our larger.... But you've answered that question.

On the process that you engaged in during your consultations, can you inform the committee on roughly how many consultations you engaged in?

The Hon. Gérard La Forest: Let me make a comment on the other one in terms of size. As you know, quite recently England

adopted a single commissioner—and they would have the same problems of magnitude as we have—after very careful study. So it's not only we who have looked at it. There was a study on it in Australia; they came to the opposite conclusion.

Would you give me the alternate question again?

Mr. Tom Lukiwski: Basically I was asking how many consultations did you engage in during the process?

The Hon. Gérard La Forest: How many? We had consultations with the four commissioners. We had consultations with two here, and I think it's two or three former commissioners. As to the public ones, what I tried to do was get a cross-section, because what I would like to do if it were a longer study—but frankly, what you're telling me is that you don't think it needs that long a study—is have a website and invite everybody to come in to give me their views.

I'm trying to count them now, but I know we've talked to several academics. I think I was able to get only one user of the system to come aboard. I talked—

Mr. Tom Lukiwski: Had anyone refused? I'm sorry to interrupt you. Had anyone refused?

The Hon. Gérard La Forest: Yes, there was a refusal of one of the users to participate. That was the only refusal. In quite a few cases, they simply didn't bother replying, and that was the end of it. But we did try to get people from the Canadian Bar, groups of that kind. We even tried to get civil libertarian organizations. In other words, we picked out as many as we could.

Professor Steven Penney (Faculty of Law, University of New Brunswick): Do you have any notion of how many people? Would it be 30 or 40?

The Hon. Gérard La Forest: I would guess we talked to about 30 people.

Mr. Tom Lukiwski: Do I have more time, or am I up?

The Acting Chair (Mr. David Tilson): Now you're out of time.

Ms. Jennings.

Hon. Marlene Jennings: Thank you.

I don't have a question. I want to correct a piece of information. You know I'm a nitpicker.

About PIPEDA, while a statement was made that the nature at the federal level would be somewhat different from the provincial, in fact when PIPEDA was adopted, it was very clear we were invading some provincial jurisdiction that did not have similar legislation. If those jurisdictions adopted legislation to protect personal information and electronic documents, then the federal government would remove itself from those jurisdictions. In fact, some jurisdictions have adopted their own provincial legislation. So while the federal mandate is somewhat different—because it deals with interprovincial, for instance, which the provinces would not be able to—it's not as wide a scope as it was in its inception.

• (2005)

The Acting Chair (Mr. David Tilson): Are there more questions from Mr. Lukiwski?

Mr. Tom Lukiwski: I have just a couple more, Mr. Chair.

The Acting Chair (Mr. David Tilson): Okay.

Mr. Tom Lukiwski: I probably won't try to break the record I think we established the last time, going to nine rounds.

If we can go back to the consultation process again, sir, were any of these consultations with the groups you engaged in public?

The Hon. Gérard La Forest: They were not public. I did invite some people together in a group with disparate ideas. I never told anybody to shut up about what they were telling me, but I did not have time to arrange open public meetings. They take a lot of time. As you probably know, I conducted a study for the Human Rights Commission, and you're looking at a one-year job when you start that sort of thing.

Mr. Tom Lukiwski: Yes, and I thank you for that. You've answered my question. I was going to ask why they weren't public, but it was a timing function more than anything else.

The Hon. Gérard La Forest: It's a time function.

Mr. Tom Lukiwski: Sure, okay.

I have a question for you. At this point in time, I'm of the view that perhaps this committee, or at least Parliament, should have been the ones examining this question, rather than the government asking you to engage in this consultation. But I'm wondering, sir, had you considered meeting with this committee at any time during the consultation process, and if not, why not?

The Hon. Gérard La Forest: I wanted an arm's-length situation. I didn't talk to government people other than Ms. Delagrave, for reasons you would understand. She's looked into the subject quite recently. Apart from a courtesy meeting with the Deputy Minister of Justice, with whom of course I had to work on the business side, I did not want to talk to government.

I thought, well, I'll stay at arm's-length all the way. It blinds me to some of the aspects, of course, but I'm convinced I have the answer I would have gotten in any event. What that is will be for you to dispose. I can propose that you dispose. But at the end of the game, I'm convinced of the rightness of the conclusion I came to. But as I say, that's for you people to say.

Mr. Tom Lukiwski: Can you inform me of the process from here on in? I understand that you completed your consultation process. I don't know if you've completed the final report and printed it. Where does it go from here? Do you, as an example, present your report to the Minister of Justice, and then to your knowledge is he tabling this in Parliament?

The Hon. Gérard La Forest: I've been asked that question. I had always assumed that it would be public. I have no idea what he's going to do. In that sense, I have no certainty, but I had always assumed that it would be public. I suspect that if he doesn't, you might be having a little political hay.

Mr. Tom Lukiwski: It would keep the conversation lively, let's put it that way.

The Hon. Gérard La Forest: Yes.

Mr. Tom Lukiwski: Mr. Chair, I have no further questions.

The Acting Chair (Mr. David Tilson): I don't think anyone does.

Just on that point, from my recollection of the minister's letter to us—the minister wrote the committee a letter—he will come to the

committee to discuss this report. That's just to clear up what was said.

This is the justice minister's letter of October 19, when we received it:

In view of this ongoing work by Justice La Forest, it would be entirely inappropriate for me to appear before you this month to discuss the issues that would be dealt with in Justice La Forest's forthcoming report. After receiving the report and having had an opportunity to study it, I would be most pleased to appear before you to discuss its content and implications.

I guess that may partially answer your question.

Mr. La Forest, Mr. Penney, thank you very much.

• (2010)

Mr. Derek Lee: Can I make one addition? Because it's likely that the report will be public, I'm sure the report will be done in as much depth as is needed for its purpose. It may not leave too many questions unanswered. In the event the report opens the door to a possible change in the status quo, there may well be questions, which Mr. La Forest may be in a wonderful position to help the members understand and discuss. So I would just hold out the possibility that we may wish to invite him again, and I hope he'd be available.

The Acting Chair (Mr. David Tilson): I guess we'll cross that bridge when we come to it.

Sir, thank you very much. Mr. Penney, thank you as well for coming. You are both released from the committee. Thank you kindly for spending the time with us and explaining what you've been doing and answering our questions.

The Hon. Gérard La Forest: Thank you very much. I only say because of the response that everything will be handled in detail. I hope it'll be a good report. It would have been better if I'd had a year or two.

The Acting Chair (Mr. David Tilson): Yes. Thank you again, sir.

Ladies and gentlemen, before you leave, I'm going to suggest to the committee that the meeting scheduled for Tuesday, November 1, at 11 a.m. be extended to 2 p.m. to deal with motions. There are at least three motions we have to deal with eventually, unless they're withdrawn. I don't know. They're there before us. So if there are no objections, that will be the process by which we will proceed.

Hon. Marlene Jennings: I object.

The Acting Chair (Mr. David Tilson): Then how do you suggest we deal with these motions?

Hon. Marlene Jennings: When the committee is in a regular sitting, I suggest you come back, and if we have that many motions, you can then table a motion or a notice of motion to the committee that you wish to extend the hearing. The committee can vote on it.

My sense is that exactly what's happening now is what probably happened on the issue of Justice La Forest. We have now three members, besides the chair, sitting here—well, now we have a fourth—and a decision is being made when all of the other members have left. I don't think that's fair.

The Acting Chair (Mr. David Tilson): Well, I got into trouble for saying whether people were present or not. All I know is that we have three motions that have been—

Hon. Marlene Jennings: And I object.

The Acting Chair (Mr. David Tilson): Excuse me.

We have three motions that have been tabled properly and that are before the committee. If we don't deal with them then, we have to deal with them eventually. So if the committee doesn't want to deal with them on the Tuesday, the question is, when would you like to deal with them?

We have guests coming on Tuesday, November 1, at 11 a.m. We have representatives from the Department of Human Resources, Correctional Service, and Revenue Canada, who received an A rating. They are coming before us. That's why I made the observation that after we have dealt with those people, we perhaps should deal with these three motions.

I understand that you object to it, but then have you got a time when we could deal with it?

Hon. Marlene Jennings: My suggestion is that at the next regular meeting of this committee, at the beginning of the meeting, before we hear if we have witnesses scheduled, you explain to this committee that we have a series of motions—you might want to explain or pass those motions out—that have to be disposed of. If the committee is in agreement that it's that urgent to get rid of those motions, then ask which day they would like to extend a hearing. Then the committee decides on a date.

It should not be an issue of major debate.

The Acting Chair (Mr. David Tilson): We'll deal with this tomorrow.

Hon. Marlene Jennings: Thank you.

The Acting Chair (Mr. David Tilson): The meeting is adjourned until 11 o'clock tomorrow morning. Thank you.

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